

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS,

Plaintiff,

V.

CARDIAC SCIENCE, INC.,

Defendant.

Civil Action: 04-30126-MAP

**COMPLIENT CORPORATION'S MEMORANDUM IN OPPOSITION  
TO PLAINTIFF'S MOTION FOR REMOVAL**

## I. INTRODUCTION

Non-party Compliant Corporation respectfully requests that Plaintiff Donald C. Hutchins’ (“Hutchins”) Motion for Removal (the “Motion”) be denied. Hutchins’ Motion seeks to “remove”, and join to this case, the action brought by Compliant against Hutchins and CPR Prompt Corporation in the State of Ohio, Cuyahoga County Court of Common Pleas, captioned Compliant Corp. v. Hutchins, Case No. 540066 (the “Ohio Action”). The removal statutes simply do not allow this result. Accordingly, Hutchins’ Motion for Removal should be denied.

Hutchins' Motion is yet another unjustified attempt to avoid appearing in and defending the claims asserted against him and his company in the Ohio Action. Compliant asserted claims in the Ohio Action for tortious interference and abuse of process under the common law of Ohio and for a declaratory judgment under Ohio law pursuant to the negotiated choice of law provision in the License Agreement entered into by and between Compliant, Hutchins and CPR

Prompt Corporation. CPR Prompt refuses to retain counsel for the Ohio Action and, instead, improperly filed an Answer therein by and through Hutchins. Accordingly, on October 22, 2004, a hearing in the Ohio Action was scheduled on Compliant's Motion for Default Judgment for December, 2004. Six days later, Hutchins filed the subject spurious Motion.

## II. ARGUMENT

The removal statutes do not contemplate the result Hutchins requests. Specifically, Hutchins asks this Court to remove and, in fact, transfer a case pending in a State of Ohio court to this District. One of the very statutes Hutchins cites, 28 U.S.C. § 1441(a), clearly provides that the Ohio Action is not subject to removal as Hutchins suggests and requests.

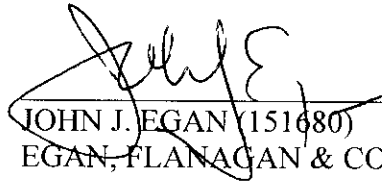
Specifically, 28 U.S.C. § 1441(a) provides, among other things, that an action pending in a State court may be removed to the "district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a) (emphasis supplied). Given that the Court does not "embrace" the State of Ohio, Cuyahoga County Court of Common Pleas, the Ohio Action is not removable to the District of Massachusetts.

Further, even if Hutchins were attempting to remove the Ohio action to the proper United States District Court, *i.e.*, the United States District Court for the Northern District of Ohio, he waived his ability to do so. A defendant wishing to remove an action must, by statute (specifically 28 U.S.C. § 1446), do so within 30 days of the filing of the Complaint. The Complaint in the Ohio Action was filed on August 27, 2004, and, in fact, Hutchins filed purported Motions to Dismiss the Complaint on September 27, 2004, both of which were denied. Accordingly, even were it filed in the appropriate District Court, Hutchins' Motion is untimely.

IV. **CONCLUSION**

Hutchins, through his pending Motion for Joinder, seeks to join Compliant to this case to, among other things, avoid the necessity of traveling to Ohio to defend the claims asserted in the Ohio Action. Hutchins' Motion for Removal is simply another futile effort in that vein and, moreover, is not warranted by the very statutes he invokes. Accordingly, Compliant respectfully requests that Hutchins' Motion for Removal be denied in its entirety.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A copy of the foregoing Compliant Corporation's Memorandum in Opposition to Plaintiff's for Removal is being served via first-class mail this 15<sup>th</sup> day of November, 2004 upon:

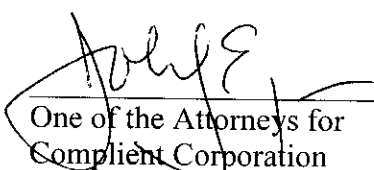
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